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ture of the contract. The court applied the correct law but based its decision upon the reasoning that the *lex loci contractus* governed the case.

It would seem that even though the contract had been made in a state other than Pennsylvania, if the action were properly brought there, the law of Pennsylvania must have been applied, since the law of the forum governs, and not necessarily the law of the place where the contract is made. The court in basing its decision upon the ground that the *lexi loci contractus* governed would seem to negative this conclusion.

CORPORATIONS—EQUITY—DISREGARD OF LEGAL FICTIONS.—The defendant was a holding corporation, owning controlling interests in eight other corporations; the chief officers of the holding corporation filling practically all of the chief offices in the other corporations. The plaintiff, a stockholder in the defendant corporation, filed a bill to compel the defendant to produce not only its own but the books of the other companies for discovery, fraud being alleged. *Held,* the defendant must produce the books for discovery. *Martin* v. *D. B. Martin Co* (Del.), 88 Atl. 612.

A corporation ordinarily is a legal entity distinct and separate from its stockholders. *Button* v. *Hoffman,* 61 Wis. 20, 20 N. W. 667, 50 Am. Rep. 131. But to prevent fraud, equity will disregard the legal fiction of a separate individual and consider a corporation as an association. *First Nat. Bank* v. *Trebein Co.,* 59 Ohio St. 316, 52 N. E. 834.

Thus it has been held where two separate corporations are controlled by the same directors, their corporate individuality will be disregarded to the extent of annulling contracts between them. *Bill* v. *Western Union Tel. Co.,* 16 Fed. 14. And when several corporations transfer their property in exchange for stock in a new company an original stockholder may maintain an action directly against the new company for stock. *Anthony* v. *American Glucose Co.,* 146 N. Y. 407, 41 N. E. 23. It is settled that a stockholder always has the right to examine the books of the corporation upon a reasonable demand. *Com. v. Phœnix, etc., Co.,* 105 Pa. St. 111, 51 Am. Rep. 184. And although there seems to be no direct authority for such an order as was granted in the principal case, yet by analogy to the above and other authorities it would seem that it was properly granted.

CORPORATIONS—TRANSFER OF ASSETS—RIGHTS OF CREDITORS.—A corporation pending a suit against it by creditors, transferred all of its property to a second corporation which latter assumed payment of some of the former's debts but not those which were the subject of the pending suit. In consideration of such transfer, the purchasing corporation issued its own stock to the stockholders of the selling corporation. The creditors of the selling corporation brought suit to subject the transferred property in the possession of the purchasing corporation to the payment of their debts. *Held,* such property is a trust fund and can be followed and subjected to the payment of the debts. *Jennings Neff & Co.* v. *Crystal Ice Co.* (Tenn.), 159 S. W. 1088.

While the ultimate result reached in the principal case is undoubtedly

correct on the facts, the implication of the trust fund theory is open to criticism.

The capital stock of a corporation is the basis of its credit and is a substitute for the individual liability of its stockholders. Ordinarily no trust relation exists towards creditors, and the corporation holds its property in the same respect as does an individual debtor; in this relation a corporation is an entity as much distinct from its stockholders as from its creditors. *Hollins* v. *Breirfield, etc., Co.,* 150 U. S. 371; *Hospes* v. *Northwestern, etc., Co.,* 48 Minn. 174, 50 N. W. 1117; *Southworth* v. *Morgan,* 205 N. Y. 293, 98 N. E. 490. For this reason, the transfer by a corporation of all its property for a consideration which inures, not to itself, but to its stockholders, constitutes a fraudulent voluntary conveyance which may be set aside at the suit of its creditors; the latter can not be compelled to go against the consideration in the hands of the stockholders, but may continue to look to their original security—the property of their debtor. The gist of the action is fraud. *Wabash, St. Louis & Pac. R.* v. *Ham,* 114 U. S. 587.

But when a corporation becomes insolvent and its assets are being administered by a court of equity, then a trust does arise in favor of creditors in the limited sense that their debts must be paid before the stockholders can claim any interest. *Graham* v. *Railway Co.,* 102 U. S. 148; COOK, CORPORATIONS, 7 ed., § 9.

CRIMINAL LAW—ARRAIGNMENT AND PLEA—NECESSITY.—The record in a felony trial failed to disclose the arraignment and plea of the defendant. Defendant entered his objection after verdict. *Held,* the failure of the record to disclose arraignment and plea is a fatal error. *Burroughs* v. *State* (Neb.), 143 N. W. 450.

There is conflict among the decisions involving the question in the principal case. One view is that arraignment and plea is merely a formal requirement which is impliedly waived by the defendant's going to trial on the merits without objection. *People* v. *Osterhout,* 34 Hun. (N. Y.) 260; *State* v. *Straub,* 16 Wash. 111, 47 Pac. 227; *State* v. *Hayes,* 67 Iowa 27, 24 N. W. 575. This view, however, has not been received with much favor, and is, perhaps, dependent upon statutes regulating criminal trials in those states which hold this doctrine.

A respectable number of cases, while not holding that arraignment and plea is a merely formal requirement, lay down the rule that arraignment and plea is waived by the defendant's going to trial without objection. *Hack* v. *State,* 141 Wis. 346, 124 N. W. 492; *People* v. *Weeks,* 165 Mich. 362, 130 N. W. 697. Since an issue is essential to a valid trial, and since there can be no issue until a plea is entered, it is difficult to see how these decisions can be upheld on principle.

The weight of authority is in line with the decision in the principal case in holding that arraignment and plea is a matter of substance, that omission of arraignment and plea is a denial of due process of law, and that the failure of the prisoner to object before verdict is not a waiver. This is the doctrine of the United States Supreme Court. *Crain* v. *U. S.,* 162 U. S. 625 (where the objection was first made in the appellate court); *Bowen* v. *State,* 108 Ind. 411, 9 N. E. 378. This doctrine has been